

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

CITYNET, LLC, on behalf of the United States of America,)
)
)
Plaintiff/Relator,)
)
v.) Civil Action No.: 2:14-CV-15947
)
FRONTIER WEST VIRGINIA INC., et al.) Judge: Copenhaver
)
Defendants.)

**FRONTIER DEFENDANTS' MOTION FOR PARTIAL
SUMMARY JUDGMENT ON THE MIDDLE MILE CLAIMS**

Defendants Frontier West Virginia Inc. (“Frontier”), Kenneth Arndt, Dana Waldo, and Mark McKenzie (together, “the Frontier Defendants”), by counsel, respectfully submit this motion for partial summary judgment requesting dismissal of certain claims brought by the Relator Citynet, LLC (“Citynet”) under Federal Rule of Civil Procedure 56.

As described in the Frontier Defendants’ Memorandum of Law in Support, filed contemporaneously herewith and incorporated herein, Citynet’s “Middle Mile Claims”—i.e., Counts I and V in their entirety and Count IX to the extent it relies on the same underlying alleged conduct—are subject to the False Claims Act’s public disclosure bar. Thus, the Court should dismiss the Middle Mile Claims pursuant to Federal Rule of Civil Procedure 56(a).¹

¹ Although the Frontier Defendants seek summary judgment on these claims now, they also reserve the right to move for summary judgment again—on Citynet’s other claims, but also on the claims at issue here based on other grounds if the Court were to deny this motion. As explained further in the accompanying Memorandum in Support, courts routinely permit successive summary judgment motions where a dual track “would streamline issues for trial and promote judicial efficiency,” as it plainly would here. *Remy Holdings Int’l, LLC v. Fisher Auto Parts, Inc.*, 2022 WL 198851, at *1 (W.D. Va. Jan. 21, 2022). If, however, the Court intends to accept only one summary judgment motion, Frontier requests that the Court deny this motion without prejudice to raise the arguments presented herein in the future.

Accordingly, for the reasons set forth in the Memorandum in Support, the Frontier Defendants respectfully request that the Court grant this Motion and order that the Middle Mile Claims be dismissed.

Dated: February 22, 2022

Respectfully submitted,

DEFENDANTS FRONTIER WEST VIRGINIA INC.,
KENNETH ARNDT, DANA WALDO,
and MARK McKENZIE

/s/ J. David Fenwick

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CERTIFICATE OF SERVICE

The undersigned counsel for Defendants does hereby certify that on this 22nd day of February, 2022, a true copy of the foregoing was served upon all counsel of record by utilizing the CM/ECF filing system.

/s/ J. David Fenwick

J. David Fenwick (W. Va. Bar No. 6029)